JD–91–05
Whitehall, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

VALLEY CENTRAL EMERGENCY
VETERINARY HOSPITAL

and

Case 4–CA–33631
4–CA–33660
4–CA–33932

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 488, AFL–CIO

Henry R. Protas, Esq., for the General Counsel.
Lance Geren, Esq., of Philadelphia, PA, for
the Charging Party.
David M. Spitko, Esq., and *Sean M. Hart, Esq.*,
of Allentown, PA, for the Respondent.

DECISION

Statement of the Case

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed by American Federation of State, County and Municipal Employees, Local 488, AFL–CIO (the Union), the acting Regional Director, Region 4, National Labor Relations Board (the Board), issued a consolidated complaint on April 21, 2005, alleging that the Respondent, Valley Central Emergency Veterinary Hospital, had committed certain violations of Section 8(a)(5), (3), and (1) of the National Labor Relations Act, as amended (the Act).[1] The Respondent filed a timely answer denying that it had committed any violations of the Act.

A hearing was held in Philadelphia, Pennsylvania, on August 9, 2005, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the parties have been given due consideration. Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following

Findings of Fact

I. Jurisdiction

The Respondent is a Pennsylvania corporation with a facility in Whitehall, Pennsylvania, where it has been engaged in the operation of an emergency veterinary hospital. During the 12-month period preceding April 21, 2005, the Respondent, in the conduct of its business operations received gross revenues in excess of $250,000 and purchased and received goods

[1] The charges were filed on January 10 and 24, and June 8, 2005. A second consolidated complaint was issued on July 20, 2005.

at its Whitehall facility valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The complaint alleges that after reaching complete agreement with the Union on the terms of a collective bargaining agreement, the Respondent withdrew from that agreement and refused to execute and abide by the terms of the agreement in violation of Section 8(a)(5) and (1) of the Act. It also alleges that after withdrawing from the agreement, which provided for striking employees to return to work on January 7, 2005, it locked out those employees in a discriminatory manner in violation of Section 8(a)(3) and (1). During the hearing, counsel for the General Counsel amended the complaint to allege that the Respondent violated Section 8(a)(3) and (1) of the Act by telling striking employees that their reinstatement was conditioned on their refraining from engaging in activity protected by the Act

A. Alleged Unlawful Withdrawal from Tentative Contract Agreement

The Respondent operates a veterinary hospital offering emergency and critical care for animals on weeknights, weekends, and holidays. Following an election conducted by the Board on April 28, 2004, the Union was certified by as the exclusive collective bargaining representative of a unit consisting of

> All full time and regular part time veterinary technicians, receptionists, and kennel employees employed at the facility, excluding all other employees, managers, guards, and supervisors as defined in the Act.

The parties began contract negotiations on November 17, 2004, in a conference room at the Respondent's facility. The Respondent was represented by Hospital Administrator Bart Ueberroth, Brenda Klatz, and attorney David Spitko. The Union was represented by Business Agent Evon Sutton, Union officers Linda Lee and Sandra Anderson, attorney Neil Goldstein, and employees Janna Tomecsek and Jody Smith. The parties exchanged and reviewed contract proposals. They agreed on a few minor matters but nothing significant.

The next negotiating session was on December 8 with the same representatives at the same place. About 8 employees were also in attendance. The Respondent presented its second contract proposal. No agreement was reached.

On December 20, they met again at the facility and about 12 employees were in attendance. At this session, they discussed the third contract proposal submitted by the Respondent and, after the Union asked for the Respondent's best offer, the parties agreed on a 3 year contract with a 3 percent wage increase in each year and the Respondent continuing to pay 100 percent of the cost of individual employee's health insurance. Unresolved were issues involving union security, merit raises, and seniority.

When the session ended, the Union met with approximately 17 unit employees to discuss the final proposal and determine whether to accept it or to authorize a strike. The employees voted to authorize a strike by a margin of 15 to 2. Thereafter, the Union sent a letter to the Respondent's board of directors outlining what it considered to be the remaining issues but no additional bargaining occurred before it called a strike commencing on December 31, 2004, in which only 12 employees participated.

Another negotiating session was held on January 6, 2005,[2] at the Ramada Inn in Whitehall, PA, with a federal mediator present. The negotiators did not meet face to face and the mediator went back and forth to their respective rooms. The Respondent presented a new proposal which offered nothing new in the areas about which the Union had expressed dissatisfaction. This proposal also withdrew several concessions the Respondent had previously made in hopes of avoiding a strike. The new offer dropped a provision whereby seniority would apply in recalling employees from layoffs, it required employees to pay 10 percent of the health care premiums, and reduced the amount of the wage increases from 3 to 2 percent. That evening the parties eventually reached an agreement on a modified version of the Respondent's proposal which was signed by Sutton and Ueberroth.

Following execution of the agreement, the Union held a meeting with approximately 9 unit members, some of whom had attended the bargaining session. Negotiating team members Tomecsek and Smith made telephone calls to employees who were not present and informed them about the meeting and what was going on. Several employees who were contacted were scheduled to work that night. At least one of them, Kimberly Rohrbach, asked Ueberroth for permission to go to the meeting but he said that they were extremely busy and that she could not leave. At some point, Rohrbach agreed to ask other employees who were working for their votes on the contract and call them in but she later decided not to do so. Other employees who were not working that night were notified of the meeting but did not attend.

Union attorney Goldstein explained the terms of the agreement to those at the meeting and advised that he considered it in their best interests to accept this one-year agreement and try to make improvements the next time. Sutton told them that she recommended acceptance because half of the work force had already returned to work and she did not believe the Employer would do anything more. The employees at the meeting discussed their options and, while some expressed unhappiness with the contract, no one suggested that it be rejected. There was no formal vote or show of hands at the meeting, but no opposition was raised when Sutton proposed that it be accepted. She told those who were scheduled to work the following evening to report for duty as provided in the agreement.

During the following day, Ueberroth telephoned striking employees who were scheduled to work that evening and told them not to come to work. The employees contacted Sutton who in turn called Ueberroth. He put the Respondent's attorney Spitko on the phone. Spitko read a letter stating that the Respondent was withdrawing the offer which led to the "tentative agreement" reached on January 6 because it understood that the Union had conducted a ratification vote which it considered "at least, improper, untruthful and disingenuous, and at most unlawful." It also stated that striking employees were not to return to work until further notice.

On January 13, Spitko sent Goldstein a letter confirming that the Respondent had withdrawn the offer which led to the "tentative agreement" reached on January 6. The letter stated that the agreement was contingent upon ratification by unit employees and the Respondent's board of directors. It outlined a number of complaints about the Union's actions on the night of January 6, as reported to it by unit employees, and asserted that this made the ratification vote conducted by the Union "either ineffective or illegal." It further stated that the Respondent was privileged to withdraw the underlying offer which led to the agreement because its board of directors had not ratified it. The letter stated that since the agreement had not been ratified, the strike continued, and the striking employees it had refused to allow to return to work

[2] Hereinafter all dates are in 2005.

were "returning to the status quo prior to the tentative agreement."

On January 19, at a meeting of the Respondent's board of directors, Ueberroth described the events of January 6, as they had been reported to him, and recommended that it not ratify the agreement. The board of directors refused to ratify by unanimous vote.

Analysis and Conclusions

It is not disputed that the parties reached an agreement on the evening of January 6 or that the Respondent withdrew from that agreement because it felt that the agreement had not been properly ratified by unit employees. However, in order for it to have lawfully done so, it must be established that employee ratification was a condition precedent to a binding contract. Board law is clear that "employee ratification is an internal union procedure; unless the parties expressly make ratification a condition precedent to reaching a contract, it is not obligatory." *Personal Optics*, 342 NLRB No. 96, slip op. at 5 (2004); *Mine Workers (Arch of West Virginia)*, 338 NLRB 406, 413 (2002). Here, the evidence fails to establish that employee ratification was an agreed-upon condition precedent.

The Respondent contends that there was such an agreed-upon condition precedent. It points to the facts that at the first negotiating session on November 17 Union attorney Goldstein stated that both sides would take any agreement back for ratification and that, during the January 6 negotiations, Goldstein told the mediator that, if the Respondent agreed to a maintenance of membership clause, the Union would recommend the agreement to the employees for ratification. Neither fact taken alone or together establishes a bilateral agreement that ratification by unit employees was a condition precedent to the contract taking effect. There is no evidence that the Respondent's representatives responded to Goldstein's statements or that there was any discussion about them during the negotiations. Apart from this, there is nothing in the record to establish that the parties had an express agreement concerning the need for ratification by unit employees. As the Board noted in *Personal Optics*, "even if the Union's prior statements arguably may have led the Respondent to believe that the Union would conduct a vote of the bargaining unit, there was never any such agreement between the parties." 342 NLRB No. 96 slip op. at 1, fn. 2. That is the case here. Moreover, the written agreement signed by the parties' representatives on January 6 contains no provision requiring employee ratification.[3]

The Respondent also contends that the Union did not ratify the tentative agreement on the night of January 6 because its actions were unlawful and this precluded ratification. However, in the absence of an agreement making ratification a condition precedent to a binding contract, the Respondent lacks standing to challenge what is within the internal domain of the Union. As the Board stated in *Longshoremen ILA Local 1575 (Navieras, NPR)*, 332 NLRB 1336 (2000), "if a union does choose to seek employee ratification, it is for the union 'to construe and apply its internal regulations relating to what would be sufficient to amount to ratification.'" In that case, union leaders declared an agreement had been ratified at a meeting of its membership notwithstanding that approximately 80 percent of the members in attendance demonstrated opposition to a new contractual provision. The Board held that "the decision as to whether ratification occurred was within the Union's exclusive domain and control, and therefore the ratification process was purely advisory." Ibid.

[3] Although the Respondent argues that the tentative agreement was drafted by the mediator, the fact is that both sides adopted it when they signed it.

Next, the Respondent contends that ratification by its board of directors was a condition precedent to the tentative agreement taking effect and that, since its board rejected the agreement, it never became a binding contract. Each of the Respondent's written contract proposals contained the following language:

> During the negotiations, the Respondent reserves the right to add to, delete from, modify, alter, amend or withdraw any portion of this proposal. The resolution of a complete agreement shall be contingent upon an agreement on all open issues and not any one issue. Any issue, sentence, clause or Section previously proposed by the Union, which is not addressed in this or any previous proposal is to be considered rejected by the Respondent. Any resolution at the bargaining table of a complete agreement is contingent on approval of the complete agreement by the Respondent's Board of Directors.

However, the Respondent withdrew from the tentative agreement on January 7, well before its board of directors voted on ratification.[4] Moreover, it did so not because of the content of the agreement, a significant portion of which was based on regressive proposals it had made as a result of its having successfully weathered the strike, but because of its objections to what it considered the Union's improper conduct on January 6 in ratifying the agreement. Likewise, the Respondent's board of directors rejected the agreement at a meeting on January 19 after Ueberroth described what he considered the Union's misconduct in connection with its ratification on January 6 and recommended that the agreement be rejected.

In *Suffield Academy*, 336 NLRB 659 (2001), the Board reiterated its holding in *Driftwood Convalescent Hospital*, 312 NLRB 247, 252 (1993), enfd. sub nom. *NLRB v. Valley West Health Care*, 67 F.3d 307 (9th Cir. 1995), quoting *Mead Corp. v. NLRB*, 697 F.2d 1013 (11th Cir. 1983), that "the law is settled that '[t]he withdrawal of a proposal by an employer without good cause is evidence of a lack of good faith bargaining by the employer in violation of Section 8(a)(5) of the Act where the proposal has been tentatively agreed upon.'" Here, the employer did just that with respect to the entire agreement. I have found that employee ratification was not a condition precedent to a binding contract. As a matter of law, the Respondent had no standing to question the validity of the Union's ratification of the agreement. Under these circumstances, the Respondent's reliance on its conclusion that the Union's ratification of the agreement was ineffective or improper does not constitute good cause for withdrawing its tentative agreement. Accordingly, I find that the Respondent's withdrawal from the agreement on January 7 constituted a refusal to bargain in good faith and violated Section 8(a)(5) and (1) of the Act. See *Crestline Memorial Hospital Association, Inc.*, 250 NLRB 1439, 1448 (1980).

B. Alleged Failure to Abide by Contract Provision Concerning Reinstatement

The agreement reached by the parties on January 6 contained a strike settlement provision that striking employees would return to work on their former shifts commencing on the following day at 5:00 p.m.[5] After the agreement was signed at the Ramada Inn, Sutton informed the employees that if they were scheduled to work that day they should report as scheduled. After the Respondent decided to withdraw from the agreement, Ueberroth called striking

[4] On January 13, by letter from Spitko to Goldstein, the Respondent reaffirmed that it had withdrawn from the tentative agreement on January 7 because it considered the Union's ratification to be "either ineffective or illegal."

[5] Although the hand-written agreement states that employees will return to work on January 6, there is no dispute that the parties intended the date to be Friday, January 7.

employees and informed them that they should not return to work until further notice. By refusing to permit striking employees to return to work as scheduled the Respondent failed to implement and abide by the strike settlement term of the agreement in violation of Section 8(a)(5) and (1). *Tri-County Produce Co.*, 300 NLRB 974, 987 (1990).

C. Alleged Lockout of Striking Employees

The complaint alleges that when the Respondent refused to permit striking employees to return to work on January 7 and thereafter, it engaged in an unlawful lockout. On the night of January 6, the Union informed striking employees that the strike was over and they should return to work on their next scheduled shift. The next day, Ueberroth called and informed striking employees that they should not return to work until further notice. Nonstriking employees continued to work. At various times after January 7, the Respondent reinstated a number of striking employees who were required to make unconditional offers to return to work. The Respondent asserts that it did not lockout the striking employees, but simply returned them to the status quo prior to the tentative agreement.

"A lockout occurs when an employer, 'for tactical reasons . . . refuses to utilize [its] employees for the performance of available work.'" *Union Terminal Warehouse*, 286 NLRB 851, 859 (1987). That is what the Respondent did on January 7 when it refused to permit striking employees to return to work.[6] Although the Respondent claims that it was returning to the status quo, the strike was over on January 6 when the parties signed the tentative agreement which provided for the employees to return to work the following day. The employer's assertion that the employees remained on strike does not make it so and there is no evidence that the Union or any employees intended to resume the strike once the tentative agreement was signed.

To be lawful, a lockout must be used solely to bring economic pressure in support of a "legitimate bargaining position," *American Shipbuilding Co. v. NLRB*, 380 U.S. 300, 318 (1965), and must be conducted in a nondiscriminatory manner. *Allen Storage & Moving Co.*, 342 NLRB No. 44 (2004). The Respondent's lockout met neither criteria. It had already reached a complete agreement with the Union on January 6 which it unlawfully repudiated the following day. On January 7, it locked out only those employees who remained on strike through January 6, while permitting nonstriking employees to continue to work. Such disparate treatment is unlawful. Ibid; *McGwier Co.*, 204 NLRB 492, 496 (1973). Moreover, the Respondent's requiring employees who had been discriminatorily locked out to make an unconditional offer to return to work was also unlawful. *Shelly & Anderson Furniture Mfg. Co.*, 199 NLRB 250, 264-265 (1972). Finally, the tentative agreement called for all strikers to return to work beginning on January 7. Like other strikers, Jennifer Powell was called by Ueberroth that day and told not to report for work until further notice. After she learned that some strikers were back at work, Powell contacted Ueberroth to ask about returning. Ueberroth told her that she had been replaced and that he would keep her resume on file for a year in the event there were any openings. Locked out employees cannot lawfully be permanently replaced. *Harter Equipment, Inc*., 293 NLRB 647, 648 (1989). Based on the foregoing, I find that the Respondent unlawfully locked out striking employees on and after January 7 in violation of Section 8(a)(5), (3), and (1) of the Act.[7]

[6] Those employees are Tara Cromis, Chrissy Kacsur, Chastity Herman, Janna Tomecsek, Christina Cawley, Nicole Andres, Ronita Lawrence, Sharon Reaves, Jennifer Powell, and Jody Smith.

[7] Counsel for the General Counsel and the Charging Party contend in the alternative that, if the Respondent did not unlawfully lock out its employees on January 7, they were unfair labor

Continued

D. Section 8(a)(1) Allegations

At the hearing, counsel for the General Counsel amended the complaint to allege that the Respondent violated Section 8(a)(1) of the Act by placing unlawful conditions on the reinstatement of striking employees and by threatening to fire returning striking employees if they engaged in a future work stoppage. Jody Smith credibly testified that after she received a message from Ueberroth telling her not to return to work on January 7, she heard nothing from the Respondent until May 4. On that date, she called Ueberroth and asked why she had not been notified to return to work. Ueberroth told Smith that the Respondent considered her to still be on strike and that in order to come back she would have to cross the picket line and make an unconditional offer to return. She asked what he meant and Ueberroth said that she could come back "without firing people up" and that she "absolutely" could not strike. Smith responded that there was no longer any reason to strike and that she could do what he asked.

As discussed above, Jennifer Powell credibly testified that Ueberroth called her on January 7 and told her not to report for work until further notice. After calling Ueberroth she was eventually reinstated in early February. Either when they spoke on the phone or the day she returned to work, Ueberroth told Powell that if she went on strike she would be terminated and that employees were not to raise issues concerning the Union in the workplace.

Employee Ronita Lawrence credibly testified that, when she spoke to Ueberroth about reinstatement in early February, he told her that she could not discuss the Union with employees who didn't want to talk about it and that, if she were to strike, it would be grounds for immediate termination.

I credit the detailed and consistent testimony of Smith, Powell, and Lawrence about what they were told by Ueberroth over the latter's generalized testimony that he had a "canned speech" that he gave to returning strikers. He said that he told them that they could not engage in an "intermittent strike" which would be an unprotected strike and would result in immediate termination. Ueberroth's testimony did not purport to describe the individual conversations he had with these employee witnesses and each of them denied that he said anything about an "intermittent strike."

I find that the Respondent violated Section 8(a)(1) by conditioning the reinstatement of striking employees on their agreeing to abandon union activity and not to engage in a future strike. *A.P. Painting & Improvements, Inc.* 339 NLRB 1206, 1207 (2003); *Parkview Gardens Care Center*, 280 NLRB 47, 50 91986).

E. Alleged Failure to Provide Information Requested by the Union

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practice strikers as of that date when what had been an economic strike was converted into an unfair labor practice strike. When an employer's unfair labor practices prolong an economic strike, it is converted into an unfair labor practice strike. *Sunol Valley Golf Club*, 310 NLRB 357, 371 (1993). It follows that if the Respondent is correct and the employees who did not return to work on January 7 were still on strike, it could only have been because of the Respondent's unlawful withdrawal from the tentative agreement of January 6. Had it not withdrawn, the employees would have returned to work on January 7 in accordance with that agreement.

By letter dated March 29, 2005, the Union requested that the Respondent provide it with the following information: (1) A list of current employees, including their names, dates of hire, rates of pay, job classifications, last known address, and telephone numbers; and (2) Copies of all disciplinary notices, warnings, or records of disciplinary personnel actions since January 5, 2005. The Respondent did not respond to this request until August 9, the morning of the hearing, when it turned over to the Union all of the information it had requested.

There does not appear to be any dispute that the requested information is relevant to the Union's duties as the collective bargaining representative of the Respondent's employees. Consequently, the Respondent was obligated to respond to this information request in a timely manner. The Respondent has provided no explanation as to why the information was not produced within a reasonable period. The Board has held that an unreasonable delay in providing such information is as much a violation of Section 8(a)(5) as a refusal to furnish it at all. *Woodland Clinic*, 331 NLRB 735, 736 (2000); *Britt Metal Processing*, 322 NLRB 421, 425 (1996). I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to produce the information requested in the Union's letter of March 29 in a timely manner.

Conclusions of Law

1. The Respondent, Valley Central Emergency Veterinary Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(5) and (1) of the Act by repudiating and refusing to execute the agreement reached with the Union on January 6, 2005.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by refusing, since January 7, 2005, to implement the terms of the agreement reached with the Union on January 6, 2005.

5. The Respondent violated Section 8(a)(5) and (1) of the Act by on January 7, 2005, locking out employees in support of an unlawful bargaining position.

6. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide in a timely manner relevant information requested by the Union.

7. The Respondent violated Section 8(a)(3) and (1) of the Act by on January 7, 2005, locking out employees on a discriminatory basis and by requiring locked out employees to make an unconditional offer to return to work.

8. The Respondent violated Section 8(a)(1) of the Act by telling returning strikers that they could not engage in activities in support of the Union while at work and would be fired if they engaged in a strike.

9. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action

designed to effectuate the policies of the Act.

The recommended order will require that the Respondent make whole employees who suffered any loss of wages or benefits as a result of its refusal to sign and abide by the terms of the agreement reached with the Union on January 6, 2005, plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER[8]

The Respondent, Valley Central Emergency Veterinary Hospital, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to execute the agreement reached with the Union on January 6, 2005.

(b) Refusing to implement and abide by the terms of the agreement reached with the Union on January 6, 2005.

(c) Locking out employees in support of an unlawful bargaining position or in a discriminatory manner.

(d) Placing unlawful conditions on the reinstatement of striking employees and threatening to fire returning striking employees if they engage in a strike.

(e) Failing to timely provide relevant information requested by the Union.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request of the Union, sign and abide by the terms of the collective bargaining agreement agreed upon by the Respondent and the Union on January 6, 2005, and make employees whole, with interest, for any loss of wages or benefits suffered as a result of the Respondent's failure to sign and abide by that agreement, and if no such request is made by the Union, bargain, upon request, with the Union as the exclusive bargaining representative of employees in the appropriate bargaining unit and embody any understanding reached in a signed agreement.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Whitehall, Pennsylvania, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 7, 2005.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 14, 2005

_____
Richard A. Scully
Administrative Law Judge

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to sign a collective bargaining agreement, the terms of which have been agreed to with American Federation of State, County and Municipal Employees, Local 488, AFL–CIO (the Union).

WE WILL NOT refuse to implement and abide by the terms of the collective bargaining agreement reached with the Union.

WE WILL NOT lock out our employees in support of an unlawful bargaining position or in a discriminatory manner.

WE WILL NOT place unlawful conditions on the reinstatement of striking employees or threaten to fire employees if they engage in a strike.

WE WILL NOT fail to timely provide relevant information requested by the Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request of the Union, sign the collective bargaining agreement agreed to on January 6, 2005. In the event that the Union does not request that we sign the agreement, WE WILL, upon request of the Union, bargain collectively with it in good faith and embody any understanding in a signed agreement.

WE WILL make our employees whole for any losses suffered as a result of our refusal to sign the collective bargaining agreement agreed to on January 6, 2005, plus interest.

VALLEY CENTRAL EMERGENCY VETERINARY HOSPITAL

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, One Independence Mall, 7th Floor

Philadelphia, Pennsylvania 19106-4404

Hours: 8:30 a.m. to 5 p.m.

215-597-7601.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 215-597-7643.